

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
August 14, 2007 Session

**STATE OF TENNESSEE v. RONALD B. ROGERS**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2004-A-698     Steve Dozier, Judge**

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**No. M2006-01339-CCA-R3-CD - Filed December 4, 2007**

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Ronald B. Rogers, the defendant, was convicted of evading arrest in a motor vehicle, a Class E felony; theft over \$10,000, a Class C felony; vandalism over \$500, a Class E felony; and criminal impersonation, a Class B misdemeanor. The defendant received an effective sentence of twenty years. On appeal, the defendant argues that: (1) the evidence was insufficient to support the guilty verdicts; (2) the trial court erred in granting the State a continuance; (3) the trial court erred in sentencing; and (4) the trial court erred in instructing the jury on the permissible inference from “flight.” After review, we affirm the convictions and sentences.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Jefre S. Goldtrap, Nashville, Tennessee, for the appellant, Ronald B. Rogers.

Robert E. Cooper, Jr., Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General; Victor S. (Torry) Johnson, III, District Attorney General; and Pamela S. Anderson and Matthew P. Stephens, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

On the evening of October 31, 2003, Jason Stubblefield parked his 1999 Chrysler minivan in a hotel parking lot while he dined at a nearby restaurant. Mr. Stubblefield stated that he thought he had locked the vehicle using his keyless remote. He said that a spare set of keys for the van was inside the vehicle. The van was missing when he returned. The theft was reported the following day.

On the midnight shift of November 12, Officer Jeff Bauer of the Metropolitan Police Department saw the van while patrolling in the Settle Court housing area of Nashville. Officer

Bauer activated his blue lights and followed the van as it sped up and made two turns. The defendant left the van while it was still rolling, and he ran behind an apartment building. The van crashed against a fence, damaging the van but stopping its motion. The defendant was caught after a short pursuit.

Officer Marcus Ryherd testified that he completed an arrest report. The defendant gave his name as “Lewis Manning.” The defendant’s actual identity was later discovered during the booking process. Before the van was taken from the scene, the defendant asked Officer Ryherd to remove the defendant’s house key from the van key ring.

Jason Stubblefield, the victim, testified that the van had a value of \$14,000. He stated that when it was retrieved, thirty days after the theft, it was “smashed up” and had been abused. He stated that he did not know the defendant nor had he given him permission to take the van.

The defendant testified at trial that he had paid Perry Shaw ten dollars to use the van a “coupla [sic] hours.” He had been unable to find Shaw to return the van. The defendant stated that he had not seen the police car behind him but had run on foot because he was afraid of police. He said that he also gave a false name because he was afraid. The defendant denied taking the van by theft.

#### Sufficiency

The defendant, in his first issue, contends that the trial court erred in failing to grant the defendant a new trial based on the evidence being insufficient to support the verdicts. The defendant’s second issue alleges that the evidence, as a matter of law, was insufficient to support the guilty verdicts. We will consider both issues as one analysis.

When reviewing the sufficiency of the evidence, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense charged beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); State v. Reid, 91 S.W.3d 247, 276 (Tenn. 2002); Tenn. R. App. P. 13(e). Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to demonstrate why the evidence is insufficient to support the verdict. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003). On appeal, the State is entitled to the strongest legitimate inferences that may be drawn therefrom. State v. Smith, 24 S.W.3d 274, 279 (Tenn. 2000).

A verdict of guilt by the trier of fact resolves all conflicts in the evidence in favor of the prosecution’s theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). “Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence.” Evans, 108 S.W.3d at 236 (citing Bland, 958 S.W.2d at 659). Nor may this court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. Evans, 108 S.W.3d at 236-37.

The defendant, other than his assertion that the evidence is insufficient to support the verdicts, provides no argument supporting the claim. Our review of the evidence reveals no support for the defendant's claim.

In order to prove that the defendant was guilty of theft of the victims' vehicle, it was necessary to prove that the defendant: (a) knowingly obtained or exercised control over the subject property, (b) without the owners' effective consent, and (c) with the intent to deprive the owners of possession. Tenn. Code Ann. § 39-14-103. The facts clearly support the jury's finding of guilty. The defendant's flight, both as a driver and then on foot, gave rise to a permissible inference of guilty knowledge. The value of the van was unchallenged.

The elements of evading arrest are that the defendant: (a) was operating a motor vehicle on a street, road, alley, or highway; (b) received a signal from a law enforcement officer to stop; (c) after receiving such signal, fled or attempted to elude the officer; and (d) acted intentionally. Tenn. Code Ann. § 39-16-603. The defendant reacted to the officer's blue lights by speeding up, making two turns, and then abandoning the rolling vehicle to flee on foot.

The elements of vandalism are that (a) the defendant caused damage or destruction to real or personal property, (b) the damage was done knowingly, (c) the property belonged to the victims, and (d) the damage was done without the owners' effective consent. Tenn. Code Ann. § 39-14-408. The defendant knowingly left the vehicle rolling toward a fence, allowing it to suffer damage. In addition, the owner testified that the interior had been abused and damaged.

The elements of criminal impersonation are that the defendant (a) intended to injure or defraud another person by (b) assuming a false identity. Tenn. Code Ann. § 39-16-301. In this case, the defendant gave his name as "Lewis Manning" in order to hide his true identity.

The defendant's testimony provided his version of the events surrounding his charges. The jury rejected this and had sound evidence to support the verdicts.

#### Grant of Continuance

The defendant next alleges error in the trial court's granting the State a continuance of one partial day to obtain the presence of the victim, Jason Stubblefield. At approximately 2:30 p.m. on the first day of trial, the State announced that Mr. Stubblefield, their last witness, was not present. The trial court continued the cause until 8:30 a.m. the following day. At that time, the court was informed that the witness had been delayed in Atlanta the previous day but was present and ready to testify. The defendant claims that he was unduly prejudiced by the delay.

The decision to grant or deny a continuance is a discretionary matter which will not be disturbed absent a clear showing of abuse of discretion. This showing is the burden of the complaining party. State v. Robinson, 146 S.W.3d 469, 517 (Tenn. 2004).

The defendant was, in fact, prejudiced by the victim's testimony although the victim could not identify the actual perpetrator. However, this is not unfair prejudice, and the defendant has failed

to show unfair prejudice. The defendant also invokes an alleged speedy trial violation. This claim is misplaced as it requires a threshold of a one-year delay before Sixth Amendment principles are implicated. State v. Utley, 956 S.W.2d 489, 494 (Tenn. 1997). We will not disturb the trial court's discretionary delay of a relatively few court hours in order to obtain the testimony of a material witness.

### Sentencing

The defendant next claims that the trial court erred in failing to reduce his sentence. The defendant provides no supporting argument other than "the interests of justice . . . demand reversal." The trial court applied two enhancement factors in sentencing: (1) the defendant's extensive record of criminal convictions or criminal behavior, and (2) the defendant's past history of unwillingness to comply with release conditions. The thirty-seven-year-old defendant had accumulated twenty-four convictions, of which nine were felonies. The defendant admitted in testimony to a history of regular drug use since childhood. He also admitted to burglarizing two residences a week for an unknown period of time. The trial court imposed sentences of six years for evading arrest as a career offender, six years for vandalism as a career offender, fourteen years as a persistent offender for theft over \$10,000, and six months for criminal impersonation. The two six-year sentences were run concurrently but consecutively with the fourteen-year sentence. The six-month sentence was concurrent with all other sentences, resulting in the effective twenty-year sentence. As a career offender as to evading arrest and vandalism, the defendant's prescribed sentence was six years. The prescribed sentence for the theft as a persistent offender was ten to fifteen years. Because the two six-year terms were the prescribed sentences, only the theft sentence was enhanced from the presumptive ten to fourteen years. See Tenn. Code Ann. § 40-35-101.

We must now review sentences in light of our supreme court's decision in State v. Gomez II, \_\_\_\_ S.W.3d \_\_\_\_, No. M2002-01209-SC-R11-CD, 2007 LEXIS 884, at \*1 (Tenn. Oct. 9, 2007). In this case, the trial court cited two enhancing factors, the defendant's extensive record of prior criminal convictions and the defendant's past history of unwillingness to comply with release conditions. In our view, the defendant's record of convictions, standing alone, gave full justification for the fourteen-year sentence imposed for the theft over \$10,000. The imposition of consecutive sentences is not a usurpation of the fact finder's power and, thus, is not impacted by Sixth Amendment principles. See State v. Joseph Wayne Higgins, No. E2006-01552-CCA-R3-CD, 2007 Tenn. Crim. App. LEXIS 763, at \*43 (Tenn. Crim. App. at Knoxville, Sept. 27, 2007).

### Jury Instructions

The defendant contends that the trial court's instructions concerning the elements of evading arrest and the instruction on flight as an inference of guilt combined to be "erroneous." Under the United States and Tennessee Constitutions, a defendant has a right to trial by jury. State v. Garrison, 40 S.W.3d 426, 432 (Tenn. 2000). A defendant also has a right to a correct and complete charge of the law so that each issue of fact raised by the evidence will be submitted to the jury on proper instructions. Id. In evaluating claims of error in jury instructions, courts must remember that

“jurors do not sit in solitary isolation booths parsing instructions for subtle shades of meaning.” State v. Vann, 976 S.W.2d 93, 101 (quoting Boyde v. California, 494 U.S. 370, 380-381, 110 S. Ct. 1190 (1990)). Therefore, we review each jury charge to determine if it fairly defined the legal issues involved and did not mislead the jury. See State v. Hall, 958 S.W.2d 679, 696 (Tenn. 1997).

The entire instruction concerning flight as a permissible inference of guilt was as follows:

The flight of a person accused of a crime is a circumstance which, when considered with all the facts of the case, may justify an inference of guilt. Flight is the voluntary withdrawal of oneself for the purpose of evading arrest or prosecution for the crime charged.

Whether the evidence presented proves beyond a reasonable doubt that the Defendant fled is a question for your determination.

The law makes no precise distinction as to the manner or method of flight; it may be open, or it may be a hurried or concealed departure, or it may be a concealment within the jurisdiction.

However, it takes both a leaving the scene of the difficulty and a subsequent hiding out, evasion, or concealment in the community, or a leaving of the community for parts unknown, to constitute flight.

If flight is proved, the fact of flight alone does not allow you to find that the Defendant is guilty of the crime alleged.

However, since flight by a defendant may be caused by a consciousness of guilt, you may consider the fact of flight, if flight is so proven, together with all of the other evidence, when you decide the guilt or innocence of the Defendant.

On the other hand, an entirely innocent person may take flight and such flight may be explained by proof offered, or by the facts and circumstances of the case.

Whether there was flight by the Defendant, the reasons for it, and the weight to be given to it, are questions for you to determine.

(Emphasis added).

In our view, this instruction was a clear and correct statement of the law. It was not given in direct connection with the elements of evading arrest. We conclude that it is not an erroneous instruction nor does it provide an unfair bias toward the defendant. We conclude that this issue does not warrant relief.

Conclusion

After review, we affirm the convictions and sentence as contained in the final judgments.

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JOHN EVERETT WILLIAMS, JUDGE